

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No. : 7,550,497
Issued : June 23, 2009
Application No. : 10/540,490
Filed : January 20, 2006
Applicant : Carmen ALMANSA ROSALES
TC/A.U. : 1625
Examiner : Rei-Tsang Shiao
Docket No. : 3494-107
Confirmation No. : 3559
Customer No. : 06449

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Director of the United States Patent
and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants requests reconsideration of the Patent Term Adjustment (PTA) accorded to the above-identified U.S. patent. Reconsideration of the final PTA calculation to increase PTA from 226 days to 590 days is respectfully requested.

Determination of PTA is based on so-called “A” and “B” delays. “A” delays are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO responses. “B” delays are defined as delays by the PTO under 35 U.S.C. 154(b)(1)(B), which guarantees pendency of an application of no more than three years.

In a decision dated June 16, 2009, regarding U.S. Patent 7,465,444, the PTO acknowledged that it has been incorrectly calculating PTA for patents issuing from national stage filings under 35 USC 371. Specifically, it agreed that in determining “B” delays, the three year period should be determined from the date that the U.S. national stage commenced or thirty months from the earliest priority date of the international application, rather than from the date that applicants completed their 371(c) requirements. In the instant patent the initial submission commencing the national stage filing was on June 23, 2005, the national phase commencement

date was on June 24, 2005 and the date the 371(c) requirements were completed was January 20, 2006. If the former date, rather than the latter date, is used for purposes of determining PTA, the total number of “B” delay days for Patent Term Adjustment is 269 days as calculated below:

Commencement of national stage = 6/24/05

Three years from filing date = 6/24/08

Issue date = 6/23/09

Post 3-year = 364 days

Applicant delays = 95 days

Adjusted PTA = 269 days

Also, in view of the decision in *Wyeth v. Dudas*, (U.S. District Court, D.C., CA No. 07-1492, MEM.Op. September 30, 2008), the Applicants believe that they are entitled to additional PTA beyond the addition requested above. Specifically, the PTA should be based on the number of days beyond 14 months before applicant received a first office action plus the number of days that pendency exceeded three years, minus any overlap between the two periods. As set forth in the *Wyeth* decision, the only way that these periods of time can overlap is if they occur on the same day. If an “A” delay occurs on one calendar day and a “B” delay occurs on another calendar day, they do not overlap. The *Wyeth* determination is applied to the present patent as follows:

Commencement of national stage = 6/24/05

371(c) date = 1/20/06

14 month date = 3/20/07

First Office Action = 2/4/08

First period = 321 days

Three year date = 6/24/08

Issue date = 6/23/09

Overlap = 0 days

Post 3-Year (as determined above) = 364 days

Applicant delay = 95 days

Total PTA = (321 days + 364 days) - 95 days = 590 days

Thus, the total PTA for this patent should be 590 days, not 226 days as originally calculated.

Furthermore, Applicants note the requirement in MPEP § 2733 that an application for a PTA be filed no later than the payment of the issue fee. However, because the calculation under the *Wyeth* decision could not be determined until the date of issue of the patent, that provision of the MPEP is inapplicable in this situation.

Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

Respectfully submitted,

By ___/ Barbara G. Ernst / _____
Barbara G. Ernst
Attorney for Applicants
Registration No. 27,195
ROTHWELL, FIGG, ERNST & MANBECK, p.c.
Suite 800, 1425 K Street, N.W.
Washington, D.C. 20005
Telephone: (202)783-6040